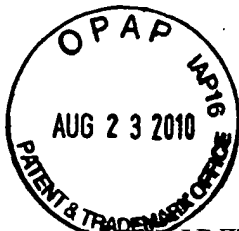


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	PATENT
	:	
Ralf WNUK et al.	:	
	:	
Serial No.: 10/587,302	:	Art Unit: 1797
	:	
Filed: July 26, 2006	:	Examiner: D. R. Anderson
	:	
For: FILTER DEVICE	:	Appeal No. _____

**REPLY BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 41.41, Applicants-Appellants submit the following Reply Brief in response to the July 16, 2010 Examiner's Answer in connection with the appeal of the above-identified application.

**Withdrawal of Rejections under 35 U.S.C. §112**

Since the rejections of claims 11-18 under 35 U.S.C. §112, second paragraph, are withdrawn, the record will not be burdened with further comments thereon. Additionally, the objection to the specification under 35 U.S.C. §132(a) also appears to be no longer an issue.

**No Teaching or Reason to Rearrange Sindorf Device is Provided**

The Examiner's Answer relies on In re Gazda, 119 F.2d 449, 204 USPQ 400 (C.C.P.A. 1955) to support its allegation that the sole difference between the subject matter of claims 11

and 19 and the Sindorf publication is a mere reversal of parts that would be obvious to one of ordinary skill in the art. However, the present claimed invention does not involve a mere reversal of parts. The claimed structure involves a pivoting device that positions the filter elements in a back washing position in which filtered fluid flows from outside to inside through the filter element opposite to that of the filtration position in which unfiltered fluid flows from the inside to the outside through the filter elements. This positioning by the claim 11 and 19 pivoting device allows the filtered fluid produced by filtration by the other filter elements in filtering positions to be used as the back washing fluid for the filter element in the back washing position. This pivoting device would not be obvious to one of ordinary in the invention at the time the invention was made since the claimed filtering device is structured and operates in a materially different manner and since no motivation or reason is presented in the prior art to make the necessary changes in the Sindorf device. In the C.C.P.A. opinion cited in the Examiner's Answer relative to the obviousness of a reversal of parts, no different operation is involved, particularly of the type involved in the subject matter of claim 11 or claim 19.

The circumstances in the rejection on appeal are more similar to Ex parte Chicago Rawhide Manufacturing Co., 223 USPQ 351, 353 (Bd. Pat. App. & Int. 1984) stating:

“...in order to meet the terms of the claims on appeal, the elements of the Baney device would have to be arranged in a manner different from that disclosed by Baney. The elements of the reference would also be required to coact differently from the way they coact in the arrangement disclosed by the reference. The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the

worker in the art, without the benefit of the appellant's specification, to make the necessary changes in the reference device.

(emphasis added)

The lack of the required motivation or reason for the changes proposed in the rejection renders the rejection untenable.

#### Proposed "Reversal" Does Not Produce Claim 11 or 19 Subject Matter

Even if the flow for filtration was reversed in the Sindorf filter elements, the result would not produce the subject matter of claims 11 or 19. Specifically, if the flow illustrated in the right hand portion of Fig. 1 was reversed such that unfiltered fluid enters outlet 8 passes through the interior of the filter element 12 to its outside with the filtered fluid exiting inlet 5, the filtered fluid would not be able to pass through the filter element in the bypass position (the left hand side of Fig. 1). The filtered fluid would merely exit the inlet port 5. Back washing would still occur by compressed air being forced upwardly through the interior of the filter element causing debris on the outside of the filter element to be discharged through passage opening 25 and out mud valve 34, 37. Even if that compressed airflow was reversed, the back washing would still not involve the use of the filtered fluid from the other filter elements in filtering positions to be used in back washing since the separate airflow would still be employed.

In the middle of page 23 of the Examiner's Answer, the Sindorf publication is disclosed as having a rotating plate moving each element into "an isolated back wash chamber". The use of an "isolated" back wash chamber is contrary to the present claimed invention (claims 11 and 19). The use of an isolated back wash chamber precludes the use of the filtered fluid from the

other filter elements in filtering positions as the back washing fluid and requires the use of a separate fluid such as air for back washing.

Accordingly, even reversing the flow of the filter device disclosed in the Sindorf publication for both the filtering and back washing would still not result in the subject matter recited in claim 11 or 19 since it would not enable the use of the filtered fluid as the back washing fluid. The structure providing use of the back washing fluid in the filter device of claims 11 and 19 patentably distinguishes the subject matter of claims 11 and 19 over the Sindorf device or any obvious variation thereof.

#### Not Obvious to Relocate Drive of Claims 11 and 19

Relative to the obviousness of the proposed modification of the Sindorf device to locate the drive at the bottom instead of the top, the Examiner's Answer appears to allege that such modification constitutes a substitution of known equivalents. Since no specified prior art shows that a bottom drive is a known equivalent to a top drive, no evidence establishes the bottom drive as being known, and thus, cannot constitute a known equivalent.

Also, no reason or motivation in the prior art is provided for this modification. Chicago Rawhide, supra.

#### Device Structure Distinguishes Claims 11 and 19, Not Material Worked Upon

The last paragraph on page 28 of the Examiner's Answer contends that the subject matter of claims 11 and 19 is being distinguished based on the material worked upon, not the apparatus. This contention is incorrect since the device structure allowing the use of the filtered fluid as the back wash fluid patentably distinguishes the claim 11 or 19 invention. By the claimed structure,

the filtered fluid has sufficient pressure to operate as the back washing fluid. The “isolated” filter element with the use of compressed air as in the Sindorf device is not necessary.

Thus, the different structure permitting the different operation patentably distinguishes this subject matter of claims 11 and 19 over the Sindorf publication.

#### Drive Part with Releasable Connection Not Disclosed in Sindorf Publication

The arguments in the Examiner’s Answer relative to the drive contained on pages 29-30 relies on a separable connection between base section 2 and head section 3 relative to the separable connection recited in claim 11. However, the base section 2 and the head section that are separately connected are parts of the cylindrical housing 1. No separable connection is disclosed for the rotating body 9 forming the Sindorf drive arranged in the interior of housing 1 having chambers 11 for the filter inserts 12 (para. 13 of translation). The Sindorf base section 2 and head section 3 do not constitute end parts of a pivoting device with which the filter elements extend and are rotated. Rather, the Sindorf rotating body 9 supports and pivots the filter inserts, which rotating body is not shown to have the claimed rod-shaped drive part releasably connecting first and second end parts of rotating body 9. Specifically, the rotational axis 10 that extends the entire height of the Sindorf rotating body is illustrated in Fig. 1 as being a single, solid part and is not disclosed as providing any releasable connection, particularly a releasable connection as claimed.

Contrary to the paragraphs spanning pages 30-31 of the Examiner’s Answer, the Sindorf header 3 and footer 2 do not correspond to the claimed end parts since they are not portions of the Sindorf rotating body 9 (i.e., are not part of the pivoting device mounting the filter elements as claimed).

The releasable connection of claim 11 is not disclosed or rendered obvious by the Sindorf publication.

#### Claimed Seal is Not Disclosed in Sindorf Publication

Relative to the seal, the Examiner's Answer contends in the paragraph spanning pages 31-32 that a peripheral seal supports the perforated plate 17 on a cylindrical bearing surface 20 of housing 1. However, Sindorf plate 17 is not part of the header 3 or the footer 2 which are interpreted and correspond to the end parts recited in claims 11 and 19. Since the plate 17 is not part of the header 3 or the footer 2 of the Sindorf publication, it cannot provide the claimed seal in the claimed combination.

#### Claim 14

Relative to the cavity recited in claim 14, the Examiner's Answer alleges that the Sindorf cavity 11 is above the filter inserts 12, but appears to concede that such cavity does not provide the recited length. Such length is alleged to be obvious without any evidence or reason therefor.

Contrary to the allegations in the Examiner's Answer on page 36, the cavity size does in fact affect the operation of the claimed device in providing a better energy balance for back washing operations as discussed, for example, in the third paragraph on page 4 of the substitute specification filed in connection with this application. Thus, the rejection is based erroneous facts.

#### Claims 18 and 25

Relative to claims 18 and 25, the Examiner's Answer states that the filter elements are in fluid communication with one another. This statement misinterprets the structure of the Sindorf

device. In the Sindorf device, each filter insert 12 is located in a separate filter chamber 11 of rotating body 9. The Examiner's Answer does not state how these separate chambers are in fluid communication with one another, particularly for the chamber in the back washing condition. Specifically, page 11, lines 1-3 of the translation of the Sindorf publication specifically discloses that the back washing chamber "is separated and sealed relative to the filtering circuit", thereby describing a construction completely opposite to that recited in claims 18 and 25.

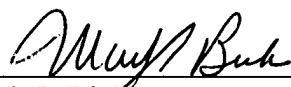
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The remaining contentions in the Examiner's Answer are adequately addressed in the Brief on Appeal and are not repeated to avoid burdening the record.

#### Conclusion

For the reasons presented in the Brief on Appeal and above, Applicants-Appellants submit that the rejections of the claims under 35 U.S.C. §103 are untenable, and request that these rejections be reversed.

Respectfully submitted,

  
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Dated: August 23, 2010